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Possible Framework for A "Land Use Partnership Act"

SUMMARY: Massachusetts municipalities would be encouraged, by the provision of technical resources and enhanced regulatory tools and powers, to develop a comprehensive plan for their community that is consistent with statewide land use objectives and to implement that plan through zoning and land use regulation.

1. The Commonwealth would make a substantial commitment to providing municipalities with: (a) technical assistance from state agency staff, (b) technical assistance from regional planning agencies and, where appropriate, other quasi-public agencies (such assistance to be supported by state funding), and (c) direct state funding for local staff and/or outside consultants, all in support of the planning and zoning commitments described below. An appropriate level of state funding for these three types of assistance would probably be in the range of $50,000 to $100,000 per municipality.

2. For municipalities electing to do so, a comprehensive plan would be prepared by a municipality (through its planning board), reviewed by the applicable regional planning agency and certified by the Commonwealth. The plan would be effective for ten years, at which point a renewal plan would be prepared, reviewed and certified. The required elements of the plan would be coordinated with those required by other former or current state planning initiatives so that municipalities can, to the maximum extent possible, use, incorporate and update other previously prepared plans (EO 418 plans, open space plans, etc.). The comprehensive plan would also contain: (a) with respect to each required element of the plan and with respect to the plan as a whole, a self-assessment of the plan's overall consistency with the Commonwealth's smart growth/smart energy principles, and (b) a self-assessment of the plan's specific compliance with the items described in #6 below.

3. The comprehensive plan would be approved by majority vote of the municipal legislative body after review by the regional planning agency and certification by the Commonwealth, as described below.

4. The applicable regional planning agency would review the comprehensive plan and within 90 days determine whether the plan is: (a) complete (that is, contains the items described in #2 above) and (b) consistent with statewide land use objectives (based on the items described in #6 below). If the regional planning agency determines that the plan is complete and consistent, then the agency would forward the plan to the Commonwealth for certification with the designation "eligible for certification". If the agency determines that the plan is not complete and consistent, then the agency would return the plan to the municipality with a statement of the reasons for its determination.

5. The Commonwealth, acting through the "inter-agency sustainable development team" that now handles the Commonwealth Capital process (or a similar inter-agency group), would review any plan designated as "eligible for certification" by a regional planning agency and within 90 days make an independent determination of whether the plan is: (a) complete (that is, contains the items described in #2 above) and (b) consistent with statewide land use objectives (based on the items described in #6 below). If the group determines that the plan is complete and consistent, the Commonwealth would certify the plan. If the group determines that the plan is not complete and consistent, then the group would return the plan to the municipality with a statement of the reasons for its determination.

6. A determination of consistency with statewide land use objectives would be mandatory upon confirmation that the plan meets certain minimum requirements, established by regulation, in the following areas: economic development, housing, open space protection, energy management and water management. For plans submitted for certification within the first five years of the passage of zoning reform, a determination of consistency with statewide land use objectives would be mandatory upon confirmation that all of the following requirements are satisfied:

A. The plan establishes "prompt and predictable permitting" of commercial or industrial development within at least one district that: (a) would qualify under the definition of "eligible location" under Chapter 40R (switching, for this purpose, the terms "commercial" and "residential" in that definition); (b) would support at least 50,000 square feet of new space (or of redeveloped space in a vacant or underutilized building); and (c) is located at least one mile from any municipal boundary (except with the approval of the adjoining municipality and of the regional planning agency(ies) for both municipalities). "Prompt and predictable permitting" means that zoning and other local land use regulations allow development "as of right" without the need for a special permit or other discretionary approval (design standards and/or site plan review being allowable) and that procedures are in place to cause permit decision-making to occur with six months of permit application.

B. The plan establishes "prompt and predictable permitting" of residential development within one or more districts that: (a) qualify as "eligible locations" under Chapter 40R; (b) allow housing at a density of not less than 4 units to the acre, without bedroom limitations or age restrictions, and (except to the extent that the regional planning agency determines that such limitations are consistent with the availability of reasonable housing choices in the municipality) without limitations on multi-family versus single-family or on rental versus ownership; and (c) collectively have the capacity to accommodate a number of new housing units equal to an average of ½% of the total existing housing stock of the municipality for each year of the plan.

C. The plan establishes that at least 50% of the developable land within the municipality that is identified by the Commonwealth, acting through EOEEA, as "environmentally sensitive", will be governed by "low-impact development" regulations and by "resource protective" zoning (such as open space residential design, agricultural/rural zoning or TDR).

D. The plan contains elements that qualify the municipality as a "green community" with respect to state energy goals.

Mixed-use districts, appropriately planned and zoned, could count towards meeting the requirements of Provision A and Provision B. The requirements of Provision A or Provision B, respectively, could be reduced or eliminated upon a determination by the applicable regional planning agency that compensatory capacity for such development exists within such districts in other municipalities in the region and that development within such other districts advances regional land use objectives to an equal or greater degree (in the case of Provision B, the Commonwealth, acting through DHCD, would also need to make a determination that residential development within such other districts advances statewide housing objectives to an equal or greater degree).

7. Each municipality would have a period of two years, following the approval by majority vote of the municipal legislative body of a certified comprehensive plan, to adopt (also by majority vote) the zoning and other land use regulatory changes, if any, needed to implement the minimum consistency requirements described in #6 above. Prior to the adoption of any zoning or other land use regulatory changes which the municipality intends to implement to satisfy the minimum consistency requirements described in #6 above, such proposed changes would be reviewed by the applicable regional planning agency and certified by the Commonwealth as "consistent", in the manner described in #4 and #5 above. Such review and certification would only address the issue of consistency with statewide land use objectives. (Note: any issue of the consistency of zoning or other land use regulations with the municipality's comprehensive plan would be left to judicial review, not administrative review)

8. Upon adoption of a certified comprehensive plan and of certified zoning and other land use regulatory changes, if needed (the "effective date"), the municipality would be entitled to various enhanced planning and zoning tools and powers, as described below. (Note: certain transition rules regarding zoning freezes and the like may be needed to ensure that these enhanced tools and powers can be effectively implemented.)

The enchanced zoning and planning tools and powers would be as follows:

A. Ability to reduce or eliminate "approval not required" lots, provided that the municipality establishes a minor subdivision approval process that provides for limited review, within set timelines, of lot divisions creating a small number of lots (such minor subdivision approval process would apply to all lot divisions creating a small number of lots, whether or not such lot division was formerly "approval not required")

B. Alternative "zoning freeze" system under which development projects (but not the land itself) are, upon the occurrence of certain initial threshold actions, protected against subsequent changes in zoning and other land use regulations for an initial period of three years and, if certain construction or other further activities occur within that period of time, protected against subsequent changes for a further period of time, possibly until completion of the development project

C. An express authorization to impose "impact fees" (with respect to development that is allowed as of right) as a reasonable, consistent and predictable means of funding infrastructure and other community mitigation necessitated by development project impacts

D. Zoning enactments would be adopted by majority vote of the municipality's legislative body, unless the municipality elected to use a two-thirds voting standard (which the municipality may elect to do by majority vote)

E. The current prohibition on regulation of the maximum interior floor area of residential structures would be removed

F. Minimum lot sizes of up to five acres would be expressly authorized with respect to land identified as "environmentally sensitive"

G. Rate-of-growth provisions limiting the number of new housing units constructed within the districts described in #6, Provision B, to no more than ½% of the total existing housing stock of the municipality per year would be expressly authorized

9. With respect to the minimum consistency requirements described in #6 above (other than Provision B), there would be no further permitting or "production" benchmarks that would need to be met after the effective date. For the duration of the term of the certified comprehensive plan, however, any amendment to the municipality's comprehensive plan, zoning or other land use regulations that (a) affected the municipality's compliance with the minimum consistency requirements (including Provision B), and (b) was not itself reviewed and certified as described above, would be conclusively presumed to be inconsistent with the certified comprehensive plan.

10. With respect to Provision B described in #6 above, if at any time (more than two years after the effective date) the total number of housing units for which building permits have been applied for within such districts since the effective date exceeds the product of (a) ½% of the total existing housing stock of the municipality on the effective date and (b) the number of years since the effective date (such product being hereinafter referred to as the "housing production goal"), but the total number of housing units for which building permits have issued does not exceed the housing production goal, then (until the total number of housing units for which building permits have been issued does at least equal the housing production goal): (i) any subsequent applications for building permits or other land use regulatory permits within such districts would be deemed

constructively approved if not acted upon within 180 days; and (ii) the municipality may not condition (including by the imposition of impact fees or rate-of-growth provisions) or deny any such permit so as to cause construction and occupancy of such housing units to be rendered infeasible (except that this clause shall in no event require a municipality to approve a greater housing density than 4 units to the acre, or such greater density as is allowed by the municipality's zoning for that district).

11. Any litigation regarding comprehensive plans, the consistency of zoning and other land use regulations, or the issuance of building permits under #10 would be dealt with by the special session of the Land Court created by the expedited permitting act.

12. The following planning and zoning changes would be effective for all municipalities, whether or not they chose to make the commitments described above:

A. Statutory transfer of development rights provisions would be expanded to include as-of-right transfers and inter-municipal transfers

B. Broader and more flexible authorization would be given for "cluster" or "open space residential design" provisions

C. Clear statutory authorization for site plan approval

D. Clear statutory authorization for form-based zoning

E. Clear statutory authorization for inclusionary zoning in locations where residential development is allowed as of right with appropriate density bonuses

COMPARISON OF HD. 1502 *AN ACT RELATIVE TO LAND USE (LUPA)* AND SD. 1193 *AN ACT RELATIVE TO MUNICIPAL ZONING, SUBDIVISION CONTROL, AND PLANNING (CPA II)*
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	LUPA (changes affecting opt-in communities only in italics)	CPA II
Limitations on Requirements for Subdivisions/Development Impact Fees	Subdivision approval is a form of as-of-right development. (A) Subdivision approval may not impose conditions to mitigate any off-site impacts, except through a development impact fee. (B) Limit ability of subdivision rules and regulations to address subjects already covered elsewhere by local ordinance or bylaw (e.g., stormwater management) in a duplicative or inconsistent manner.	SECTION 18. Development impact fees defined and allowed *in addition to* other fees or requirements for mitigation a municipality may impose under state and local laws.
Requirement of Declaration of Development Intent for Plan Freezes	Changes the current 8-year zoning freeze for projects that receive subdivision approval, by making the freeze attach to the project and not the land. Requires property owners/developers to file a declaration of development intent prior to filing of subdivision plans in order to obtain zoning freeze. Eight year zoning freeze would: (A) run from date of filing of declaration of development intent; (B) protect the development from all future zoning changes, provided the first public notice occurs after the filing of the declaration; and (C) apply to the intended development, not to the land.	No comparable provision.
Expansion of Permit Freezes	Expand the current 6-month freeze on changes to zoning or other local land use ordinances or by-laws to two years (minimum). In cases involving construction, such zoning freeze is conditioned upon construction's continuance to completion as continuously and expeditiously as is reasonable. Construction involving the redevelopment of previously disturbed land would be deemed to have commenced upon substantial investment in site preparation and/or infrastructure construction, and construction of development intended to proceed in phases would have to proceed expeditiously, but not continuously, among phases. Extension of special permits may be allowed by ordinance or by-law.	SECTION 6B: Building permits remain at 6 months; special permits expanded to two years (maximum), and subdivision plans expanded to three years. Extension of special permit allowed by majority vote of special permit granting authority.
Limitation of Scope of Site Plan Approval	Framework for site plan review will be the same form as-of-right development, and not a form of discretionary approval like special permits. Site plan approval is by simple majority, and concludes within 90 days (special permits are super-majority and involve 155 day process). Site plan approval may only impose conditions to mitigate extraordinary adverse impacts of the project on adjacent properties or public infrastructure, but it may include impact fees. Approval valid for *at least* 2 years.	SECTION 12. Approval by majority vote within 155 days. May include conditions, safeguards, and limitations to mitigate the impacts of a specific use of land or structures on the neighborhood. Approval valid for 2 years.
Dispute Avoidance/Limitation of Appeals	Limit appeals under the subdivision control law and site plan review to provide an opportunity to ensure that the relevant authority did not make a clear error of fact or law, creating a process more like building permit appeals.	SECTION 19. As an optional means of avoiding or minimizing land use disputes, applicants may request a conflict assessment and resolution effort to be conducted by a neutral facilitator. Whether or not a resolution results, the applicant may still proceed with the application without prejudice for having participated in a conflict assessment or resolution. SECTION 23. After filing an appeal, the parties may agree to mediation the decision being appealed. Such mediation must conclude within 180 days.
Majority Vote for Zoning Ordinances/Bylaws	Establish majority vote as the standard for approval of a zoning ordinance or bylaw, unless the municipality votes by two-thirds to change the requirement back to a two-thirds standard.	SECTION 7: Two-thirds vote required to change standard of approval to "lesser majority vote."
Allow Regulation of Maximum Residential Floor Area	Eliminate the existing prohibition on such regulations, thereby allowing communities to regulate the maximum size of houses and permitting them to regulate "McMansions" while limiting the teardown of existing moderately sized homes.	SECTION 4: Identical.
Explicit Statutory Authorization of Certain Powers	Explicitly affirm the authority of municipalities to adopt and implement site plan approval, development impact fees, TDR, cluster/OSRD and form based zoning, which is defined.	Form-based zoning allowed, but not defined. TDR definition same as LUPA, but does not allow for incentives to encourage transfer of development rights (which LUPA does). Cluster development defined and allowed, but with more conditions than LUPA imposes.
ANR/Minor Subdivision Review	*(A) Allow municipalities to limit or eliminate the ANR exemption. (B) Require municipalities to have a limited and efficient minor subdivision review process that reviews projects with 4 or fewer lots within 60 days.*	SECTION 29. Planning board may adopt a limited subdivision review for projects with 3 or fewer lots.
Changes to Subdivision Plan Freeze	*(A) Reduce the duration of the plan freeze from eight years to three years (five years if there has been substantial investment in site preparation and/or infrastructure construction). (B) Plan freeze would protect development from any subsequent changes in zoning or other local land use ordinances or bylaws (for duration of plan freeze), provided first notice of zoning change given after filing of declaration of development intent.*	No comparable provision.
Rate of Growth/Development Programs	*A zoning ordinance or by-law that imposes a reasonable limitation on the number of building permits that may be issued for new housing units within residential development districts in any twelve month period shall not be declared exclusionary or otherwise against public policy.*	SECTION 20. Authorizes municipalities to adopt a rate of development ordinance or by-law.
Natural Resource Protection Zoning	*A zoning ordinance or by-law that requires a minimum lot area of two acres or more for single family residential development upon farmland, forest land or other land of environmental resource value shall not be declared exclusionary*	No comparable provision.

	LUPA (changes affecting opt-in communities only in italics)	CPA II
	or otherwise against public policy.	
Priority for Infrastructure Funding and Consideration under State Programs	*Certified plan communities shall receive priority in the award of discretionary funds for local infrastructure improvements by EOHED, EOEEA, EOT, and A & F. In addition, state agencies, in administering regulatory and/or capital spending programs that have a material effect on land use and development, shall take into account the land use plans of certified plan communities.*	No comparable provision.
Municipal Land Use Plan	To become eligible for opt-in benefits, municipality must create a Community Land Use Plan consistent with the Commonwealth's five stated land use objectives (economic development, housing [establishing a district where 5% growth is possible over 10 years], open space, water management, and energy management. Such Plans must be reviewed and certified by the appropriate RPA and then adopted by the community to take effect.	Requires municipalities to create a Land Use and Zoning Plan every ten years that contains the following elements: housing, natural resources & elements, land use, and an implementation program. At the municipalities discretion, such plan may include the following elements: economic development, cultural resources, open spaces and recreation, services and capital facilities, transportation. Review and certification b y the RPA at community's discretion. Approval required by majority of planning board and majority vote of municipality's legislative body.
Affordable Housing	No comparable provision.	SECTION 21. Authorizes municipalities to adopt an ordinance or by-law requiring or providing incentives to residential developers to provide affordable units within development. SECTION 32. A Planning Board may require developer to include up to 25% of the number of market rate-units to be affordable. Regulation may provide for construction of units off-site, or for land dedications or payment in-lieu of units.
Variances	No comparable provision.	SECTION 22. Amends variance statute by incorporating standards applied by courts in determining whether hardship is present.
Open Space/Public Space Dedication	No comparable provision.	SECTION 31. Authorizes municipalities to require up to 10% of land shown on a subdivision plan to be park space suitably located for playground or recreation purposes or for providing light and air.